

# School Nurse Special Issue Documentation

## Introduction

The Family Educational Rights and Privacy Act (FERPA), a Federal law, protects the privacy of student education records. The law applies to all schools receiving funds from the U.S. Department of Education and all education records, in all media, including the student school health record. Student health records maintained by a school are generally **not** regulated by HIPAA; HIPAA applies to health records maintained by healthcare providers.

FERPA requires written permission of the parent or student, if the student is an adult, to release information and allows disclosure without written permission in certain situations. These situations include school officials with legitimate educational interest, other schools to which a student is transferring, appropriate persons in cases of health and safety emergencies, and others.

The school nurse documents health information and services in the individual student's school health record. FERPA protects the school health record and allows the school nurse to share health related information with school officials that furthers a student's academic achievement and maintains a safe and orderly school environment. The requirements of the registered nurse license, school nursing standards, and school nurse ethics, although not specifically addressing documentation, provide overall guidance for documentation of school health services and health information.

The school nurse has a legal and ethical responsibility to disclose confidential information about a student when child abuse is suspected, there is an indication that the student may be suicidal or may be contemplating self-injury, there is the potential for the student to injure another, or there is a health or safety emergency. Further concerns may arise when the student's health record contains information about sensitive issues.

Sensitive school health information, such as abuse, AIDS/HIV status, mental health, pregnancy, abortion, and sexually transmitted diseases is confidential and governed by FERPA and state laws. Ideally, when situations involving sensitive issues arise in schools, the decision to share information is on a case-by-case basis, with consideration for the specific situation, the student health and safety, the student age and level of maturity, and the student's level of competency to manage the situation. Confidential medical information is shared on a need-to-know basis for the purpose of keeping a student safe in the school setting. Non health licensed persons given confidential health information on a need-to-know basis are reminded that the medical information is confidential, should not be re-disclosed, and may be protected by laws of the federal or state governments. School staff always encourages a student to self-disclose to parents or guardians and are instrumental in helping students to do so. Making these decisions require the school nurse to exercise professional judgment and knowledge. Concerns of record release and student privacy violation and/or endangering the student health and safety need to be addressed with a school team and decided on considering the individual student situation.

## FERPA safeguards

- Records are confidential
- Annual parental notification and rights
- Access is limited to school personnel who have a legitimate need to know
- Document rationale for information release in a health and emergency situation
- Assign individuals with records access and post on the records file
- Access log sign in including reason for access
- Failure to comply may result in penalties

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## Considerations

- Education of all staff on FERPA
- Implement a staff signed confidentiality agreement and consequences for inappropriate information release
- Include school nurse documentation of sensitive health information in school district policy and procedures
- Develop a procedure on location of district health records
- Develop record transfer procedure for sending health records (envelope marked confidential to receiving nurse)
- Document student symptoms, concerns, and health questions (subjective data) in the student's own words
- Store health records in a secure and locked file
- Limit use of personal notes (personal notes do not provide accountability)
- Return unneeded health records to parent or health provider

## FERPA-definitions

- **Education records** are all records, files, documents, and others materials containing information directly related to a student; maintained by the agency or institution, or a person acting for such agency or institution (34 CFR §99.3). Education records are all records regardless of medium, including, but not limited to, handwritten, videotape or audiotape, electronic or computer files, film, print, microfilm, and microfiche. PreK-12 student's health records maintained by an education agency including immunizations and records and school nurse records, are generally considered education records and subject to FERPA. This is because they are directly related to the student; maintained by an education agency or institution, or a party acting for the agency or institution; not excluded from the definition of education records as treatment or sole-possession records; or on some other basis.
- **Personal notes** made by teachers or other staff, are not considered education records if they are kept in the sole possession of the maker; not accessible or revealed to any other person except a temporary substitute; and used only as a memory aid (20 U.S.C. 1232g).

## Further Confidentiality Law ONLY for Special Education, Iowa Administrative Code Summary 28—IAC 41.610-626.

### Summary

The school nurse documents health information in the school health record and ensures the privacy of the health record incorporating laws, standards, and ethics. The school nurse, knowledgeable of the laws, protects the confidentiality of the school health record by implementing the district policy and procedures. Concerns about privacy violations, record release, student privacy, and endangering the student health and safety need to be addressed with the knowledgeable school team considering the individual student situation.

### Legal Advice

"I strongly urge that the message to the school nurses be that their responsibility is to accurately and appropriately document ALL relevant information about their students. They should ask themselves, "If I were coming into this school for the first time, what information would I like to have about this kid?" and then document that information. They should not be inappropriately concerned with how others at the district safeguard the information." Carol Greta, DE Attorney, May 5, 2010.

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14. U.S. Department of Education. (Current). Family Policy Compliance Office. Retrieved February 8, 2010, from, <http://www2.ed.gov/policy/gen/guid/fpco/index.html>. At this site, access *FERPA-HIPAA joint guidance*.

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May 10, 2010